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President of the Philadelphia & Reading R. R. Co.,

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COMMITTEE ON COMMERCE

OF THE

HOUSE OF REPRESENTATIVES,

Upon House of Representatives Bill No. 1028, to regulate Inter-State Commerce, and to prohibit unjust discrimination by common carriers.

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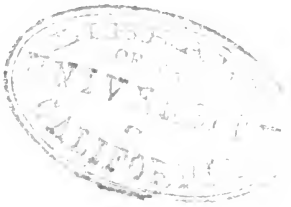

Mr. Chairman and Gentlemen:

As my time is limited I will speak as rapidly as possible, and will endeavor to confine myself to facts. I will refer to the evils which exist, and endeavor to suggest a specific remedy for these evils. Unfortunately I am the president of a railroad company. My own company is distinguished from the trunk lines, both in its organization and in its business. Although its system is confined within a circle described by a radius of one hundred miles, it moves far more tonnage than any railroad in the United States. It has built up a large local traffic,—its business is confined almost exclusively to local industries; and so it may be said to depend upon local, as distinguished from that which is called inter-state, commerce.

We have been injured, as I take it, by the excessive competition of the trunk lines with each other, which has resulted in producing an abnormal condition of affairs, whereby the manufacturer, located five hundred or a thousand miles from the seaboard market, where he sells his product, has been able to compete successfully with the manufacturer who is but fifty miles from tide-water, by reason of the trunk lines carrying the products of the former at from one half to one fourth of the actual cost of transportation, though in order to do so they have imposed on the local manufacturer double the amount of charges that would have been necessary had their treasuries not been depleted by carrying inter-state commerce at a loss. This injury, therefore, has not been on account of discrimination against inter-state commerce. Indeed, the great difficulty has been that local and State commerce as such has been taxed double and treble the amount necessary to pay for its transportation in order to enable long lines of railway to carry for almost nothing that which may strictly be called inter-state

traffic. Therefore, as you can find in the Constitution of the United States no power authorizing you to interfere with State railway organizations, it must follow that the evil is one which Congress cannot redress, because neither the State governments nor the State railway companies have imposed any unjust discrimination or inter-state commerce as such, and whatever unjust burdens are to be borne have been imposed on commerce which is strictly within their own domains.

I submit, with great confidence, that the only justification for interference by Congress with the affairs of State railway companies must be because of an unjust discrimination by one State against the traffic of another; where as, the facts are, that so far as there has been unjust discrimination, it has been exercised by a railway company created by one State in favor of the traffic from another State, and to the prejudice of the traffic of its own State, and I cannot see that the existence of such state of facts vests in the United States Government any power which would justify its interference with railway corporations created by the States.

Leaving the constitutional question, however, and taking up the bill itself, I propose, in the first place, very briefly, to say why I think the present bill does not meet the evil for which a remedy should be found. Its provisions are not broad enough to cover the evil which exists, and in a number of instances it prohibits that which should not be forbidden.

In taking up the bill before your Committee, I do not propose to discuss it in the order of its clauses, but simply by referring to the subject matter itself.

There is no particular objection to the directory clause, that for like and contemporaneous services equal charges should be made to all.

There is a direct prohibition against drawbacks, as such. But open and public drawbacks, which all shippers can obtain, are not wrong, though a secret drawback given to one shipper and not to another in similar circumstances, is not only bad policy, but bad law and bad morals. Take a company like our own

for example. We ship for consignment beyond the borders of Pennsylvania, say three millions of tons of coal per annum, and we have to compete with other railroads which are only two-thirds of the distance that we are from the markets taking the coal. We, therefore, make open and public drawback, fully and properly announced, which every shipper to the competitive market can obtain, and such drawbacks are entirely fair and proper, and ought not to be prohibited. If they were prohibited, however, a railroad company by merely publishing several rates to different points could obviate all difficulty imposed by the prohibition. I think it unfair, if not unjust, to prohibit drawbacks of this character. But by the language of this Act all drawbacks, whether open and general, or special and private, would be equally prohibited.

As to the pooling system and contracts with reference to earnings, which are prohibited by the bill, I shall speak hereafter, if I have time, and would only say here that while there are cases in which such contracts might work injustice, upon the whole I seriously doubt the propriety of interfering with them.

With reference, however, to the prohibition against charging more for a short distance than for a long one, I desire to say something, and I must call your attention to the fact that the charges of a railway company are not only for the use of motive power and roadway, but include the use of cars, and must, therefore, be governed greatly by the important question of the detention of cars by consignees.

I will take our road as an example. We carry eight millions of tons of coal a year, and of this amount about three millions of tons are carried to a great depot on navigable water, where every facility is afforded for the immediate delivery of the coal and the speedy return of the car. The trip can be made and the car returned in twenty-four hours, and it is no uncommon thing to get three trips a week out of a car running to this depot. We make more money, therefore, out of a car so used

than out of one which, although moved a shorter distance, occupies more time in its discharge and return. There must be, therefore, either a charge for the detention of the car or the gross charge for freight must embrace a sum representing the value of the car as an earning power. If we get the most effective use of rolling stock by moving our cars one hundred and twenty miles three times in one week, it is better and more profitable than to move them one hundred miles and only secure one trip a week, and hence, without injustice, the charge for the one hundred miles may be greater than the charge for the longer distance. The capital rendered useless by the detention of the cars is something for which compensation should be made to a railway company.

In this bill it is further provided, that no change of schedule rates shall be made, or at least that no greater or less sum shall be charged for services than the schedule rates, without five days public notice of the change. I want to illustrate the injurious effects of such a prohibition. We have probably the largest number of manufacturers on our road to be found on any railroad of equal length in the country.

Sometimes there are large contracts for material given out. All the roads are competing for this traffic resulting from these contracts. It is very important for us that the manufacturers on our line should get the contracts, and in all these cases upon application, at a days' notice, or even less, we name a rate for the particular shipment, and this is not unjust to any one. It does not follow that a man sending a single car in a year to a particular point, shall have the benefit of a rate given for the shipment of a thousand cars, or that if you have a schedule rate to a point where a shipment of one car a month might be expected, that you should not change it by telegraph on learning that a thousand cars will be transported. But if you name the rate for one manufacturer, you must name it for all who are similarly situated, and who desire to compete for the contract.

The benefit resulting to a railway company from the prosperity of great industrial interests on the line, is a proper subject for consideration in making rates. And there is frequently an urgent necessity quickly to make a change of rate, which this bill seeks to prohibit. I should, of course, take a very different view of this question, if the bill only proposed to prevent unjust discriminations, or interfere with the right of making drawbacks when not properly made.

THE CHAIRMAN.—Drawbacks, when properly made. I desire to call your attention to the effect of that—if you allow that, do you not allow discrimination between railroad and railroad? On the other hand, if, by a general rule, which applies to all the States, you prohibit this, would it not be better regulated?

MR. GOWEN.—I will answer that question at once, and I think you will see that the enforcement of such a rule—by destroying competition, would leave some railway companies in great embarrassment. For instance, we have extensive coal mines. Our mines are located say, two hundred miles from New York, while others are from one hundred and twenty-five to one hundred and sixty miles—therefore the shorter lines would fix the rate to New York, and if our long line desires to compete with the short line, it must name an equal charge. We must either do that or lose the business, and if you announce the rule of no discrimination in rates, or what in our case would be the same, no drawbacks—the result would be to throw the traffic into the hands of the shorter line, and prevent competition by the longer, unless we should be willing to make the competitive rate to New York govern our entire trade.

THE CHAIRMAN.—You understand that this bill does not restrict proper competition between roads. On the contrary, it permits them to charge the same rates as they charge on the other, so that you have all the privilege of charging cheaper rates.

MR. GOWEN.—We would not have, because rebates and drawbacks are prohibited by the bill, and as we cannot tell where

the coal is eventually to go, and as the rebate or drawback applies to the locality to which it is shipped after leaving our line, and not to the person who ships the coal, it would be almost impossible for us to equallize the rate in any other manner than by a drawback, so as to enable us to secure the business to competitive points.

THE CHAIRMAN.—What is the difference whether you reduce your schedule rates, or equallize the charge in the manner you name?

MR. GOWEN.—Because we carry our coal to tide-water at the end of our line, which is within the State, and it is only when the coal is re-shipped by vessel that we can tell whether it is entitled to a drawback. We have, as I have said, a large depot at tide-water; the coal goes there by rail, is dumped, and the car comes back. That coal may be afterwards shipped to a competitive point, from which it would have been excluded unless carried at a lower rate than we charge for coal to other places, but we cannot name this lower rate when we first get the coal to carry, because it is not until after our railway service is ended and the coal delivered at tide-water and re-shipped by vessel that we can tell whether the low rate is applicable to it or not, as the latter depends upon its point of ultimate destination by vessel after it leaves our line. Hence we must adopt the drawback system, which would be prohibited by the bill under consideration by your Committee. Now, no one is injured by such drawbacks; they apply to locality and not to shippers; they are open and public; each shipper, whether of a hundred tons or a hundred thousand tons to the same locality, gets the same drawback, and if we were forced to discontinue them we should probably be obliged to quit competition with rival lines for the trade of New York. If we abandon competition, we must reduce our output of coal. If we reduce the output, we increase the cost per ton, not only of mining, but of carrying, and, therefore, would be obliged to charge even the local traffic a higher rate

than we do now, when we have the advantage of shipping our surplus at lower rates to competitive districts.

I call your attention to this in order to show that a drawback or a discrimination on rates in favor of particular places or localities is not improper. It is for the interest of the public that there should be competition among railroads, and the result of competition must be some discrimination in rates as between places more or less affected by competition. Such a discrimination is not an unjust one. The real difficulty, however, is from *unjust* discrimination—not as between localities, but as between persons,—and no words can properly express my disapprobation of a system under which railways carry for A at a less rate than they carry for B, when the service rendered to each is the same. That such unjust discrimination exists in the country, no one can deny. We need no other evidence of it than the fact that in almost every branch of business, dependent largely for its success upon railway transportation, a few persons or firms at every business centre have monopolized the business, and become enormously wealthy, while all the rest have become poor. It does not do to say that this is because of their superior intelligence and business ability, for it is well known that others who have been unfortunate are equally intelligent and equally able—but it is because the few wealthy ones are the favorites of the railway companies, and by obtaining special rates, lower than their competitors, are enabled to absorb the business, and to make money when others are losing. It is this personal favoritism which is the crying evil, and which has led to what is called public clamor for relief by legislation, though I would use a much more dignified term than clamor when referring to the intense feeling on this subject now existing throughout the country, and manifesting itself by a demand for remedial legislation. The objection to the Bill is, however, that it goes too far; that it not only prohibits discriminations which are unjust, but those which are entirely right and proper. There can be no words found sufficiently strong to condemn a discrimination in

freight charges made for the purpose of enriching one class of shippers at the expense of others; but where a discrimination is made for the benefit of the railway company, and not for a favorite class of its customers, it presents no objectionable feature. Take the case of a western railroad which develops a country capable of raising wheat or other cereals upon which the company depends almost entirely for its traffic: it is manifestly greatly to the interest of such a company to increase the productive capacity of its region. Now, suppose that for the purpose of doing so, by increasing the yield, say from twelve to thirty-five bushels of wheat per acre, it should announce that it would for a given time carry for each farmer, either for nothing, or for a greatly reduced price, all the wheat he would raise over twenty-five bushels to the acre. This would be offering an inducement to farmers to increase the yield of their lands, greatly to the benefit of the railway company, and though it presents a feature of discrimination in favor of the one who raises thirty bushels per acre, and against the one who prefers to raise only twelve bushels to the acre, it is neither unfair nor unjust, but it is founded upon a *bona fide* desire to increase the productive capacity of the territory tributary to the railway company. Take the case of our own company, which for some years has been accustomed to guaranty the first mortgage bonds of new iron works located along its line, to the extent of one-half the amount necessary for their erection. This loan of credit is undoubtedly a discrimination in favor of a new furnace, as against an old one, already erected, to which no such aid was extended—but the object was to bring upon the line of railway a large amount of traffic which we otherwise should not have been able to obtain, and, therefore, it was not unfair.

THE CHAIRMAN.—Col. Fink argues elaborately against railroads encumbering themselves with manufacturing or other industrial establishments.

MR. GOWEN.—Col. Fink speaks probably for the trunk lines, and this accounts for his position. If you will look at

the trunk lines you will see that there has been no great effort on their part to build up local industries. The business of the far West, the wealth of China and Japan, have caused them to shut their eyes to the necessity of developing local traffic along their lines, and hence the continuance of the struggle to feed Europe with breadstuffs carried at cost, or even less than cost, instead of locating bread-eaters along their own lines, whose industry would build up a demand that might always be depended upon to pay proper rates for transportation.

MR. MCLANE.—These gentlemen who have appeared before this committee, and have justified the low rates which you condemn, have used precisely the same arguments as those employed by you to condemn them.

MR. GOWEN.—I do not condemn the low rates.

MR. MCLANE.—You condemn the discrimination.

MR. GOWEN.—Only when it exists, as it has for the last few years, for the benefit of a favored class.

MR. MCLANE.—These low rates are justified before this committee by precisely the same arguments you use to justify your discrimination on your own road.

MR. GOWEN.—I cannot see how any one can justify a rate which takes money out of the treasury of a railway company and gives it to some favored agent, dealer, or middleman.

MR. MCLANE.—They say that it is done to develope their trade, to enable them to compete with the Black Sea.

MR. GOWEN.—If it is done to extend business, and the money lost is not recovered by charging more for other business, it may be justifiable.

This brings up the point to which I desire to call your attention, viz.: that where such a rate is made, not for the purpose of benefiting the railroads, but for the purpose of taking millions of dollars a year out of their treasuries, and paying it to

a middleman, who intercepts traffic on its way to the sea, and secures a monopoly of it by reason of the low rate given to him alone, then it becomes a wrong, and should be prohibited.

MR. MCLANE.—That is what the chairman wants. That is the purpose of his bill.

MR. GOWEN.—And so far I trust he will succeed. I think I can show you instances where these low rates instead of being made to benefit the company were made for the benefit of outside parties, and cannot be justified. If I can succeed in showing this, then you will admit I have a right to ask you; if you have the power, and to ask my own State, which surely has the power, to provide a remedy that shall be an effective one, and that will absolutely prevent grain being transported and oil carried solely for the benefit of the few to the injury of the many; not a remedy consisting of a commission to report one or two years after the injury is committed, but a remedy which can be applied instantly to prevent the continuance of the wrong. I have no desire whatever to act as a censor of other railway companies. I have no rule of railway ethics that I propose to prescribe for any one other than myself. I claim the right always, however, to defend my own company. When the acts of other companies cause us to lose money, I have the right to object; and when those acts are deliberately committed for the purpose of forcing my company to lose money, then I have a right not only to seek a remedy for the evil, but to criticise the motives of those who seek to inflict it. I shall not consider the subject generally; but, as my time is limited, will take up special instances, and I can refer to none more glaring than that of the monopoly given to the Standard Oil Company by the marvellous action of some of the trunk lines.

It is well known that in 1879 the production of oil in Pennsylvania reached 20,000,000 of barrels, that some 3,800,000 barrels remained stored in the oil region, and 16,200,000 barrels were transported from the region. Of the quantity transported 12,800,000 barrels came to tide water, and of these

11,400,000 barrels were actually shipped to foreign countries. You can see the magnitude of this traffic, and the enormous profit that might be made out of it by railways. You can see how much was bought and paid for by foreign countries, which should pay a reasonable sum for it—which did pay a reasonable sum for it—a price which would have enabled American railways to make large profits, but by what must ever be regarded as one of the most marvellous transactions in the history of American railways, that profit was diverted from the coffers of the railway companies into those of the Standard Oil Company. Nay, I can go farther and say, that not only was the entire profit so diverted, but in addition to the profit, from one-half to three-quarters of the actual cost of transportation was also added to the magnificent donation made by the trunk lines to the Standard Oil Company. The published rate for carrying oil a year ago was $1.40 per barrel to New York, and $1.25 per barrel to Philadelphia, and such a rate is what the traffic could at all times have produced to the railway companies. It is well known, however, that the rate to the Standard Oil Company was much less than to the public. I am not able to tell exactly what it was, but I believe it was about eighty-five cents a barrel, when others paid from $1.25 to $1.40 a barrel. The result was that no one could transport oil but the Standard Oil Company, and that, with the exception of three or four refineries, none survived the unfair competition with this company. The railroad companies justified this special rate on account of the magnitude of the business of the Standard Oil Company, but the latter would have been unable to ship more than anybody else, with equal capital, if they had not secured the favored rate. There were some producers of oil who refused to submit to the sway of the Standard Oil Company, who refused to be told that they could not have oil transported unless they sold it to the Standard Oil Company; and some of the gentlemen appealed to the Reading Railroad Company to carry their oil. We told them that our road was at least one hundred miles distant from the oil regions, and that we had not

the money to build a connecting road. They replied that they would construct a pipe line to reach our road. They had no right of eminent domain, and could not take land to lay their pipe against the wishes of the owners. They succeeded, however, in buying the ground for the purpose of establishing a pipe line, and they laid a 6-inch pipe a distance of one hundred and four miles, and connected it with our road at Williamsport. They erected their machinery, and are delivering us oil; and we agreed to give them a reasonable rate, and agreed that we would not carry at a less rate for anybody else than we did for them. They were ready to move oil about the first of June last, and on the fourth day of June a meeting of the trunk lines was held at Saratoga, at which the representatives of the Standard Oil Company were present, and on that day the through rate on oil was reduced to twenty cents per barrel to the Standard Oil Company. It has subsequently been reduced to fifteen cents, and I believe, though I do not certainly know, to ten cents per barrel in cars of the Standard Oil Company. So that instead of getting even eighty-five cents per barrel—or even cost, which would be from thirty-five cents to forty-five cents per barrel; the trunk lines have been carrying the valuable traffic in great quantities, at about one-third or one-fourth of the actual cost of transportation. Was this done for the benefit of the companies interested in the transportation? or was it done for the purpose of injuring and destroying the financial credit of the New Pipe Line Company and the Philadelphia and Reading Railroad Company. I think I will be able to prove at the proper time and by proper testimony, that the ostensible and announced object was to destroy our credit, and to enable the Standard Oil Company to buy up the new pipe line, and I am told that at the meeting at Saratoga, a time was fixed by the Standard Oil Company, within which they promised to secure the control of the pipe line—provided the trunk lines would make the rate for carrying oil so low, that all concerned in transportation would lose money. There can be no doubt therefore, that, taking the avowed and ostensible object of the

Saratoga meeting as the true one, it constituted on the part of the willing participants, a criminal conspiracy of the most dangerous character.

If, as the result of legitimate competition, one company obtains a profit at the expense of another, the injured company may have no right to complain, but I submit with great confidence as an axiom of railway management, that the officers of one company have no right to make their own shareholders suffer great losses, for the purpose of inflicting loss upon those of another line—and, that the trunk lines have wilfully thrown away profits equal to ten millions of dollars per annum, for the sake of inflicting a loss of a hundred thousand dollars upon the pipe line, and the Reading and Central New Jersey Railroad Companies, admits of no contradiction. Is it fair competition on the part of the New York Central, the Pennsylvania and the New York, Lake Erie, and Western Railroad Companies, to whom the actual cost of carrying oil is from thirty-five to forty-five cents per barrel, and who might easily obtain $1.25 per barrel for the service, to carry from three-fourths to nine-tenths of the entire tide water traffic of 12,000,000 barrels per annum, at ten cents per barrel, and involve their shareholders in a loss of profits equal to from two and a-half to five per cent. upon their entire share capitals, for the purpose of preventing a rival line from earning any money, by carrying the remaining one-tenth or one-fourth. Surely this is neither fair nor legitimate competition.

Mr. McLane.—You are discussing this on the assumption that the legislation of the country can remedy this? I want to know who is injured by this competition.

Mr. Gowen.—Assuming that the power to legislate properly exists, and putting out of sight the question as to what is the proper way to remedy the evil, I answer your question by saying that the stockholders of the companies are greatly injured by such a reduction of rate, and that the producer of oil is

injured, though the Standard Oil Company is benefited, by obtaining a special rate of about one-fourth of the actual cost of transportation.

MR. MCLANE.—I do not understand you to say that the public is injured?

MR. GOWEN.—Beyond the oil producers, the general public is injured only to the extent that it must pay increased rates on other items transported, in order to enable the railway companies to stand the losses incurred by the transportation of oil.

MR. MCLANE.—Does this reduction in oil have any effect on their rates for other products transported?

MR. GOWEN.—Unquestionably.

MR. MCLANE.—You stated that they had reduced the oil rates?

MR. GOWEN.—Yes, sir; and the reduction was made just at a time when all the industries of the country were reviving. We all know that recently the general traffic of the country has increased to such an extent as almost to block the wheels of commerce. The country is recovering from its condition of business depression, and hardly a railroad has been able to move the business offered to it; and yet you have companies engaged in the transportation of twelve millions of barrels of oil per annum, running their locomotives, which might have been earning large sums, for the purpose of carrying oil at a price which required them to pay out for every dollar they received at least four dollars to cover the cost of transportation. The result must be that the shareholders are injured by being obliged to receive less dividends than might have been earned; or else, if there is no reduction of dividend, that other traffic must pay excessively to cover the losses sustained by carrying oil.

MR. O'NEIL.—Is there not an act controlling the Pennsylvania Railroad Company, and has there not been some litigation regarding it?

MR. GOWEN.—There is litigation pending against the Standard Oil Company.

MR. HENDERSON.—This Company is incorporated, is it not?

MR. GOWEN.—Yes, sir; by the State of Ohio, I believe. Now the most glaring evil remains to be considered. It has been testified by gentlemen appearing before you on behalf of the trunk lines that the low rate was necessary to afford protection against the encroachments of the pipe line and the Reading Railroad Company; but when I tell you what I believe to be the true cause of the reduction, which was proved before an investigating committee of the State of New York, you will probably be astonished. The Standard Oil Company, knowing that the rate was to be reduced, previously sold oil in Europe, in large quantities, at prices they would have charged had such reduction not been made, and thus put the difference of rates into their own pockets as increased profits. You may call the Saratoga agreement pooling, self-defence, co-operation, or what you will, but it was simply an agreement by railroad companies controlling nine-tenths of the oil traffic of the country to take out from their own treasuries sixty to seventy cents on every barrel of oil transported, and put the money in the pockets of the Standard Oil Company. Gentlemen may say that it was done to protect their companies, but Heaven save stockholders from such protection. It is safe to say that within the last eight months millions of dollars have been taken from the earnings of these companies and paid into the treasury of the Standard Oil Company.

MR. WAIT.—You think there is a corrupt agreement.

MR. GOWEN.—That is what no one can find out. I merely paint the picture as it exists, and when you ask me who is the loser I tell you that every producer of oil who is compelled to sell his product to the Standard Oil Company is a sufferer.

It is but proper that I should refer, in passing, to the arguments on behalf of the trunk lines, most of which, I believe, studiously avoided the oil question. My friend, Captain Green, of the Pennsylvania Railroad Company, referred to it, however, and, I

am told, criticised our course, and made us the subject of some animadversions. Now, with reference to his charge that I am the "President of the bankrupt concern," I can only say that it is certainly not the fault of the Pennsylvania Railroad Company that we are not bankrupt, and surely in their case at least "the wish is father to the thought." I do not know whether you have ever heard of the old Jacksonian Justice of the Peace in Pennsylvania, who shared his political leader's antipathy to corporations to such an extent that he instantly rendered judgment against a plaintiff who had loaned and sought to recover from another the sum of five dollars, on learning, during the progress of the case, that the five dollars loaned was in the form of a note of the United States Bank, which he looked upon as a monster of iniquity. It is said that to the day of his death he insisted upon the unconstitutionality of the bank, and alleged he knew it to be so *because he had decided it himself.* So, I fear, it is with our friends of the Pennsylvania Railroad Company. The bankruptcy of the Reading Railroad Company has long since been promulgated by them as a dogma, and with the wonderful *esprit du corps* which characterizes their staff, my friend, Captain Green, implicitly accepts it as an article of faith. Why, I am told that one very prominent official of the Pennsylvania Railroad Company is not even convinced to the contrary, though our shares are worth to-day from eighty to one hundred per cent. more than the price at which he was selling them short a few months ago.

But the particular argument of Captain Green's, to which I desire to call your attention, is that which is founded upon his allegation that there is no injustice done, because the "*shippers do not complain.*"

You probably remember the case of the judge, who, finding his brains perplexed whenever he heard both sides of a cause, determined to relieve himself from the mental strain by hearing but one side so that he would have no difficulty in arriving at a decision. So is it with our good friends of the Pennsylvania

Railroad Company. With the astuteness which always characterizes them, they have probably anticipated this investigation, and conducted themselves toward their oil shippers in such a manner as effectually to prevent complaints from any. But you, gentlemen, all know how this has been done. If any one of you does not, I can tell you it has been accomplished by the ingenious plan of having but one shipper, viz., the Standard Oil Company —which, I doubt not, is abundantly satisfied with its treatment by the Pennsylvania Railroad Company, and has no idea of appearing before you to make any complaint. Captain Green is therefore entirely right when he says that the shippers do not complain. It is those who would like to be, and cannot be shippers who are complaining. I could show you, where there are those who would spend one million of dollars in the erection of oil-refineries in Philadelphia, if they could by any possibility obtain oil on equal terms with the Standard Oil Company, and there is now in this room a gentleman with capital and experience in his business, who is, and has been for some time, anxious to put up a large refinery in Philadelphia the moment he is assured that he can obtain a supply of oil at the same rates as the Standard Oil Company—and who, for nearly a year, has been unable even to secure an answer to the inquiry whether in case he put up his works he could have the oil transported on the same terms as the latter Company.

How long this is to last no one can tell. I believe that the publicity given to the existence of the wrong will go far to bring about a remedy, and that even the discussion before your Committee will be productive of good. I believe that the force of public opinion will gradually compel the trunk lines to remove from the producers of oil the great incubus of the Standard Oil Company, and to restore to their stockholders the large profits which have been wasted in the insane attempt to carry oil for nothing for the sake of inflicting an injury on a rival line. But I think I hazard nothing in this prediction, that the ruling passion will be strong enough even in death to prevent the

advance of rates, until all the seaboard storage capacity of the Standard Oil Company, estimated at about 2,000,000 barrels, is filled up with oil at the low rates, so that when the price is advanced the Standard Oil Company, and not the railroads, will get the benefit of the advance on the large amount stored.

I desire to relieve the Baltimore and Ohio Railroad Company from any charge of participation in the action of the trunk lines. Their representative protested vehemently against the action at Saratoga. They refused to carry a barrel of oil at the low prices, and have, in season and out of season, demanded a restoration of paying rates.

So much then for the allegation that there is no injury. There is an injury to every interest involved but one—an injury to every one engaged in the production of oil, except the Standard Oil Company; an injury to the stockholders of all the railroad companies, and the only one benefited is a company that itself produces but little oil, and that but for the control it has acquired by placing itself between the producer and the consumer, and securing a favored rate from the railroads, would have been unable to drive its competitors out of business.

MR. O'NEILL.—This has been a custom of long standing with all of the railroads, has it not?

MR. GOWEN.—We never had anything to do with it until the pipe-line was laid, except to carry such oil as the Pennsylvania Railroad Company gave us. We had a contract with the Pennsylvania Railroad Company. They fixed the through rates, and out of the rates fixed by them we received our pro rata proportion.

MR. O'NEILL.—Has there not been railroad investigation in Pennsylvania?

MR. GOWEN.—Yes, sir.

MR. O'NEILL.—It seems to me your argument comes to this: It is not a question whether the rates of the company are too

high or too low. That is the business of the stockholders to complain of.

MR. GOWEN.—Yes, sir. But it is also the business of those representing one-fifth of the railroad interest carrying oil if those representing four-fifths combine against them by such means as I have referred to.

MR. O'NEILL.—Take, for instance, the cases of large houses, such as A. T. Stewart & Co. and Field, Leiter & Co., there is nothing to prevent them or Mr. Wanamaker, if he chooses, to endeavor by the use of large capital to compete with others who have not such advantages.

MR. GOWEN.—The difference is that Wanamaker, Stewart, and Leiter are individuals, charged with no public duty, and amenable only as other citizens for any violation of law, whereas a corporation, invested with the right of eminent domain, for the purpose of maintaining a public highway, is responsible as a common carrier, and subject to regulation and control by legislation.

MR. O'NEILL.—Is there no remedy at common law?

MR. GOWEN.—I am coming to the question of a remedy, and shall endeavor to show what legislation is necessary to make that remedy effective.

The State Legislatures should provide the remedy, as there can be no doubt as to their power. But if the constitutional power to regulate commerce between the States can be construed to give to Congress the right to legislate upon railway management of inter-State commerce, then, as a lawyer and as the president of a railway company, I would ask you to create by statute the same form of remedy that I would ask the State Legislature to adopt, and that is to authorize the Courts to issue writs of mandamus to railway companies and railway officials to compel the performance of their obligations as common carriers. Neither our present forms of remedy, nor those pro-

vided for in the bill under discussion, are speedy enough to be of service. If you file a bill in equity, you can get no proper relief until final hearing, and in the meantime your business is at a stand-still, and you are practically ruined before you obtain your decree. The remedy that would be afforded by application to a Board of Railway Commissioners is entirely inadequate. The time lost in the attempt to secure redress by such means is fatal to the shipper, whose transportation facilities are withheld or withdrawn pending the struggle.

If a peach grower in Maryland proposes to ship peaches at the regular rate, and a railroad company refuses to take them, it is surely no adequate remedy for him after spending $3,000 or $4,000 in money, and two or three years of time in litigation, to obtain simply damages for the detention of his cars and the loss of his crop. Or as the result of the present mild winter, suppose that when summer comes there is a scarcity of ice at the seaboard, and from the inland pools of Pennsylvania, Massachusetts, or New York, which have been frozen, a crop of ice has been secured, and a train loaded and offered for shipment to New York. Then suppose the shipper is told by the railroad company, "you cannot ship your ice unless you pay higher than others." Can the proposed railway commission remedy such a wrong? Why, the ice would be melted, as the peaches would be rotten, before the ice dealer or the peach grower would have had time to get the commissioners together.

Now I take it that what is really wanted is immediate and speedy relief. Assuming that you have the power to grant it—assuming that the Constitution of the United States gives to Congress the power to so regulate inter-state commerce as to compel every shipper to be treated alike—then I affirm that no remedy would be so certain and so effective as a statute declaring that the writ of mandamus may be issued by the courts at the instance of any person aggrieved to compel the instantaneous performance by a common carrier of the duty which is imposed upon him at common law. I believe that the courts

of some of the States have decided that such a writ is applicable, but there are doubts upon the subject, and all apprehensions about it could be removed by the passage of a law.

You might declare that there shall be no unjust discrimination among shippers, though I take it there is really no necessity whatever for any declaratory act upon the subject, as the common law, which compels common carriers to treat all alike, is a sufficient foundation for a suitor to stand upon, when he asks a court to compel a railway company to do him justice. If you merely pass an act declaring that every United States Court shall have the power in cases of inter-state commerce, or where it has jurisdiction by reason of the citizenship of the parties, to issue a writ of mandamus to compel a railway company at once to do the particular act required to be done, that is, to move traffic on equal terms for all, there will no longer be any danger from unjust discrimination. Take the monopoly of the Standard Oil Company as an illustration. Suppose the shippers of oil originally had had the right to apply to the local courts of their districts, or to the United States Courts if the latter had jurisdiction, for writs of mandamus compelling the railway companies to move their oil on the same terms as those granted to the Standard Oil Company, do you suppose the present injustice could have been long continued? Instead of this, however, the only remedy has been to file a bill in equity, and to obtain at the end of years of delay a final injunction, granted long after the business of the complainant has been destroyed by the very acts of injustice for which he sought relief. But if instead of the slow process of relief in equity, the injured party can obtain at once a writ of mandamus to compel the railroad company to move without delay, daily or hourly, every car of oil that was offered them at the same rates as for the Standard Oil Company, the trouble would soon be over. The real difficulty is, that there is no remedy except the inadequate one which results from long and tedious litigation. To show the utter inability of obtaining speedy relief under the present forms of remedy, I may refer to what the people of the

oil region of Pennsylvania have done in this matter. They applied to the Attorney General nearly two years ago under a statute which authorizes that officer to issue the process of commonwealth for the purpose of investigating alleged injustice in such matters. The litigation has since been going on—hundreds of pages of testimony have been taken—the Master, or Examiner, appointed by the Court (for the proceeding is in the nature of a chancery one), meets counsel with their witnesses, day after day, and is anxious and willing to bring his labors to an end —but the successful tactics of the defendants have already succeeded in securing such delay, that it is difficult to predict when the end will be reached of even the preliminary steps of taking testimony. Again, in order to redress and punish the public wrong (and now I reply to my friend Mr. O'Neill) an indictment was found in the Courts of Clarion County against certain members of the Standard Oil Company for conspiracy. The grand jury returned a true bill. Those of the defendants living in the State, and amenable to its process, were arrested and held to bail; some of the principal offenders, however, reside in the City of New York. They refused to enter Pennsylvania, and although a true bill has been found against them, and although there exists every necessary allegation, averment, and fact required to be made out, in order to obtain a requisition to bring these non-resident defendants to justice, yet, up to this time, the executive of the commonwealth has failed to issue such requisition. Therefore, even the criminal laws as administered appear to be inadequate.

But this is not all. Although the constitution of Pennsylvania, adopted five or six years ago, expressly takes from the Supreme Court of Pennsylvania all original criminal jurisdiction, three of the judges of that court have been found to interfere with, and tie up the criminal prosecution against the resident defendants by a rule to show cause why the case should not be removed into the Supreme Court for trial.

On behalf of a patient, long suffering, and outraged commun-

ity, I present these facts to you as a complete answer to the inquiry why relief is not obtained in Pennsylvania.

Suppose that the United States Courts at Pittsburgh, Williamsport, or Philadelphia, in cases of proper jurisdiction, had the power, upon application of any person aggrieved, to issue a writ of peremptory mandamus to compel the movement of traffic; the disobedience of the mandate would be contempt of Court. Do you think it would be long before the evil was entirely cured? Do you think that any officer of a railway company, carrying oil for the Standard Oil Company at ten cents a barrel, and attempting to charge forty or fifty cents per barrel to other shippers, would put himself in jeopardy by disobeying a writ of peremptory mandamus, compelling him to move the traffic at the same rate for all parties? I submit, with great confidence, that such a remedy would be certain and effective; that no other can be found to answer so well; that no railway company desiring to do justice need fear an application for the writ, that every question of what is and what is not an unjust discrimination, can safely be left to the determination of the Courts. You can no more legislate properly on such an intricate question as freight charges than you can frame a constitution embracing all the technical details required to be applied by legislation from time to time to suit the changing wants of a progressive population. But if you once announce—what is the common law—that no common carrier shall make any unjust discrimination, and then give to the Courts the power to enforce obedience to the law by a writ of mandamus, you vest in the proper judicial tribunals, in whom it ought to be vested, the ability to apply a remedy which will be short, sharp, and decisive, and which, take my word for it, will relieve you hereafter of the annoyance of being compelled to listen to the recital of the evils of which the people have complained.

THE CHAIRMAN.—Of course we understand now, Mr. Gowen, that the difficulties you encounter in Pennsylvania are not from

any want of law, but are difficulties of execution in the administration of the law. You have in Pennsylvania all the remedy you want.

MR. GOWEN.—No. We yet lack a proper remedy. The Constitution and the law, both statute and common, properly forbid the wrong, but we have not an effective remedy.

THE CHAIRMAN.—You have the common law.

MR. GOWEN.—We have the common law, liability of common carriers. But we can only use the writ of mandamus for causes to which under the common law or statute the writ of mandamus is applicable. It can be issued to compel a public officer to do his duty; but a railway official is not a public officer, and there is no statute in Pennsylvania making the writ applicable to enforce the liability of a common carrier. If the evil complained of is a forcible obstruction—if the railroad company engages in acts of commission intended to obstruct a party from using his property, for instance, then you can obtain a preliminary injunction restraining the company from the commission of the wrongful act. But if the obstruction is merely passive, such as refusing to transport, you cannot obtain a preliminary injunction, but must wait till final hearing for your remedy. I would, therefore, suggest, that if any law is passed by Congress on this subject, it should be to vest in the Courts of the United States, in all cases where they have jurisdiction, the power to compel railroad companies and other transporters to do their duty as common carriers, on the application of any party aggrieved.

MR. O'NEILL.—Mr. Gowen, may I ask you a question? This has been a very interesting discussion, and it has suggested to my mind this query: Take the community of Philadelphia, for instance. Do you understand that the community—the business men, or that portion of the community dealing in oil, or wanting oil for shipment, is considering this difficulty between the Standard Oil Company and your railroad, and other rail-

roads in Pennsylvania, anything other than a mere disagreement between railroad companies as to who should get the freight, or as to who should get the business ?

MR. GOWEN.—I can hardly say what those who are getting the oil consider it to be, but I do know very well that those who have industriously tried and cannot get it, feel it to be a very great outrage upon themselves. I only know that Philadelphia, being much nearer the oil regions than New York, should have fully one-half, if not two-thirds, of the oil business of the country, and I know it has not got it. I know the reason it has not is, that the Standard Oil Company's refineries are located principally in Cleveland and New York, and that nobody but the Standard Oil Company can have oil transported. And you will readily see that when the railway companies carry a barrel of crude oil from Pennsylvania to Cleveland to be refined, then load up the refined oil and carry it back from Cleveland to New York, and charge much less for the entire service to the Standard Oil Company than they charge any one else for simply carrying the crude oil from the well to Philadelphia, that the business community of Philadelphia is grievously injured by such a course.

MR. O'NEILL.—My question was, as to whether the matter is not looked upon as a dispute between the railways, as to who shall carry the oil.

MR. TURNER.—Is there any suspicion or proof that the directors of these railways are interested in the Standard Oil Company ?

MR. GOWEN.—I really would not like to say that there is.

MR. TURNER.—What is their motive if they are not ?

MR. GOWEN.—Echo answers, What !

MR. TOWNSEND.—You would have us understand then only, that there is a discrimination in freights by rival railways, to the prejudice of others ?

MR. GOWEN.—No ; much more than that. I know this, that only three or four months ago we were told—I do not mean

myself, but the gentlemen who directly represented the pipe line which leads to our road—that if they would agree to give all their oil to the Standard Oil Company to be refined, we could carry 10,000 barrels a day, and the rates would be advanced by the trunk lines. "But," to use the language of those making the offer, "we" (meaning the Standard Oil Company), "will never permit the trunk lines to advance the rate on oil, until your pipe line gives us all its product to refine," and the prophecy of four months ago has become the history of to-day.

MR. O'NEILL.—Mr. Gowen, I understood you to say, that the pipe line to your road, regulated the freight in bringing oil in that way to the seaboard?

MR. GOWEN.—It has regulated its own freight charges, but we have been, on account of the trunk lines, unable to make a proper charge for freight. What we propose now is, to bring the freight up to a living rate,—a higher one. We think that the producer and consumer of oil are willing to pay the railroads a very liberal, or at least a proper price, for the transportation of oil.

MR. O'NEILL.—Do you think the chairman of this Committee in the pending bill, has any idea of specifying at what rates the railroads should carry produce?

MR. GOWEN.—Undoubtedly not. But if this Committee will provide a remedy by which every man who chooses to refine oil at tide-water, shall be enabled to get his oil carried as cheaply as the Standard Oil Company, there will be no future trouble about either discrimination or delay.

MR. O'NEILL.—But you want Congress to legislate for or against it?

MR. GOWEN.—Not at all. I simply desire, if there should be any legislation at all, that there shall be a legal remedy provided, to compel everybody to be served alike. Now take the case of the Standard Oil Company. Here is a corporation incorporated with a capital of three and a-half millions of dollars,

by the State of Ohio. It does a business which has probably yielded annual profits as high as seven millions of dollars, out of dealing in the products of Pennsylvania, and yet I am told, that up to this time, it has paid no taxes upon its business in Pennsylvania, although all our other corporations are almost taxed to death, for the privilege of carrying on the traffic of the Standard Oil Company.

MR. O'NEILL.—Congress has no right to regulate freights, and that is not the object of this bill at all, but you assume to think that Congress shall pass something specially to regulate the freights.

MR. GOWEN.—I am sorry if I have made myself so misunderstood. I certainly never intended to assume a position so foolishly absurd as that which you impute to me. I have simply asked the Committee that if it does anything, it shall provide a remedy whereby every trunk line in this country will be compelled to carry oil for the producer at the same rate it carries it for the Standard Oil Company.

MR. HENDERSON.—I would like to ask a question. Would there not be the same objection if you authorize this proceeding by a writ of mandamus? Would they not still take their appeals to higher courts, and would not the expenses of litigation still be large?

MR. GOWEN.—No; the difference is this, if you will permit me to explain. If I tender a shipment of grain or of oil to-day and it is refused, it simply means that I can do no business at all. Pending the two years it takes for the determination of the question as to my rights, my business is at a stand still and I am ruined, and no damages that I can subsequently obtain will compensate me for the loss. But if I can file a petition at ten o'clock in the morning, and obtain a writ of alternative mandamus returnable at three o'clock in the afternoon, and upon proof, at three o'clock, secure a writ of peremptory mandamus to compel the railroad company to move the grain or oil, then

my business goes on without interruption, and the question of the rate can be adjusted and determined without the previous destruction of my business. The great thing is to have the traffic moved. There could be no monoply, such as that of the Standard Oil Company, if it did not have its business transacted on more favorable terms than anyone else. Why, Pennsylvania produces most of this oil. My friend, Mr. O'Neill, asks me what injury is it to Pennsylvania? Why, here is the State of Pennsylvania producing twenty millions of barrels of oil per annum, and getting not one cent of profit out of it. The refineries are without her borders, and she does not even have the poor satisfaction of making the Standard Oil Company pay taxes for the privileges of robbing her of her most lucrative trade. This great Company, that transacts all the oil business; that takes it from her borders, and grows rich upon it in other states; that controls her corporations and defies her courts, declines to pay taxes on the ground that it is an Ohio corporation.

MR. TOWNSEND.—Pennsylvania should change her laws then. Congress has nothing to do with that.

MR. GOWEN.—That is entirely true; but if there was no unjust discrimination, if everybody who desired to spend his money in erecting an oil refinery in the City of Philadelphia, was allowed to have his oil transported on the same terms as the Standard Oil Company, the refining business would spring into activity at once, and destroy the monopoly, and the producer would be enabled to sell his oil.

MR. O'NEILL.—Did I understand you to say—I merely ask for information—that there is oil that cannot be brought to market?

MR. GOWEN.—There is oil that cannot be brought to market unless it is sold to the Standard Oil Company; and the Standard Oil Company having the monopoly, makes its price, and says: "We will give you so much for your oil; and if you do not sell it to us you cannot sell it at all."

MR. TOWNSEND.—Does not your line of road offer to carry for whoever will transport his oil over your line?

MR. GOWEN.—Yes; but the pipe line leading to our road can transport only about five thousand barrels per day because there is no greater refining capacity, independent of the Standard Oil Company. The pipe line has a carrying capacity of ten thousand barrels a day, but when it was ready to go into operation, the Standard Oil Company, with its large capital, seduced from their allegiance some of the independent refining establishments,—paid them a large price for the sake of preventing their connection with the pipe line. Therefore we cannot carry any more oil than is required by refineries ready to refine it.

MR. MCLANE.—I have been listening with a great deal of interest to this branch of this discussion, wherein you seek the help of Congrese. But I cannot understand very well the statement why the laws of Pennsylvania do not reach this evil.

MR. GOWEN.—The laws of Pennsylvania do reach the evil so far as prohibiting it.

MR. MCLANE.—That is what I want to explain. I cannot understand, for the life of me, why this same evil does not apply to the transportation of coal, for instance, to New York, as much as it applies to Philadelphia. In other words, is not your road, like all other roads, subject to the laws of Pennsylvania?

MR. GOWEN.—Undoubtedly. The difficulty is in enforcing the law in Pennsylvania just as there is a difficulty of enforcing it in the United States Courts—and that is that there is to-day no prompt remedy, certain and effective enough for the removal of the evil.

MR. MCLANE.—Under the statutes of Pennsylvania?

MR. GOWEN.—Yes, sir. Another difficulty, and one of which I speak with great hesitancy, for I do not care about washing the dirty linen of Pennsylvania in public at all, is that the

parties interested in this monopoly have such control of the politics of Pennsylvania that they must either undergo a change of heart or we must send some missionaries among them to endeavor to extirpate the evil at its root before we can hope for relief.

MR. O'NEILL.—Do you mean to say that there are certain parties in Pennsylvania who are controlling the judges of the Supreme Court—judges selected and elected by the people—a Supreme Court, composed of sterling men; that men such as these can be controlled improperly, or be induced to prejudice any proceeding before them by delay or other means?

MR. GOWEN.—Do you know, Mr. O'Neill, what the lion told the fox when he asked him if his breath smelled badly?

MR. O'NEILL.—No, sir.

Mr. GOWEN.—He said he had a cold, and could not smell.

MR. O'NEILL.—And what I want to say is that I repel any imputation upon the character of the State of Pennsylvania or of its judicial officers.

MR. GOWEN.—The imputation comes from you and your friends, not from me.

MR. O'NEILL.—No, sir. My dear sir, you are insinuating an improper interest in regard to the judiciary, in connection with the proceedings of which you have spoken, and have been speaking slightingly of them, in intimating that these proceedings cannot be carried into operation.

MR. GOWEN.—I am only asserting facts. I have heard the counsel of the Pennsylvania Railroad Company, standing in the Supreme Court, threaten that Court with the displeasure of his clients, if it decided against them, and all the blood in my body tingled with shame at the humiliating spectacle. And I can tell you further, I was a member of the Constitutional Convention of Pennsylvania, and I know that if that Convention did anything effectively it was when it declared that the Supreme Court should not have original jurisdiction in criminal cases,

and yet I have seen three Judges of the Supreme Court lay their hands upon an indictment in a county court, and hang it up. For what? That is all I know of the case. I know that we are going to have clearer skies and a purer atmosphere in Pennsylvania within a very short time. I know that when it comes to applying a proper remedy to an evil which affects my State, the good people in that State will not fail to apply it. I ask no aid from Congress. I started out with my argument, doubting whether Congress had even the power to do anything upon the subject of railway transportation. And all that I say is this—that if Congress has the power claimed—if under the Constitution the power to regulate inter-State commerce vests in the Congress of the United States the right to declare what shall be an illegal discrimination by railroad companies, and to provide the proper remedy for the evil—then as a lawyer and as the president of a railroad company, I ask, that that remedy shall be a writ of peremptory mandamus.

MR. TURNER.—To apply at the beginning of the suit instead of at the end.

MR. GOWEN.—Certainly. A preliminary injunction in equity is to prevent the commission of overt illegal acts. You cannot obtain a preliminary injunction to compel the defendant to do anything, and what you want is a writ that will compel action. Now I quite agree with my friend, Mr. Adams, as to the necessity for a commission. I have no objection whatever to a congressional commission. I have no objection to a State railway commission, always provided that it be composed of proper material. But I protest most earnestly as a practical business man, against such an insufficient remedy for the great evils complained of as would be afforded by the report of a railway commission, made two or three years after the injury had been committed, and probably an equal length of time after the business of the complainant had been destroyed by acts of injustice and of wrong, such as those from which relief is now asked in the form of remedial legislation.